



A Publication of the Water Systems Council

SIGNIFICANT COURT CASES DECIDED ON GROUNDWATER ISSUES

WSC Calendar

FEBRUARY - MARCH 2006

WSC Spring Members Meeting, St. Regis Hotel, Washington, DC

- 28-1 Congressional Meetings
- 1 President's Welcome Reception and Congressional wellcare® Awards
- 2 Committee Discussions & Reports, Executive Director's Report, Business Meeting, Invited Speakers and Evening Dinner Event
- 3 WSC Board of Directors Meeting

MARCH 2006

- 23 MD/DE Children's Water Festival, Chesapeake College, Wye Mills, MD

Three recent cases tried in Michigan, Ohio and Arizona were decided in favor of the groundwater industry. The cases – each involving groundwater rights – raise and decide, at least for now and within their respective jurisdictions, important legal questions regarding groundwater.

Michigan Citizens for Water Conservation v. Nestlé Waters North America Inc.

In the first of these cases, the Michigan Court of Appeals overruled the trial court's opinion in *Michigan Citizens for Water Conservation v. Nestlé Waters North America Inc.* The citizens' group objected to the Nestlé company's bottling water from a spring for retail sale, based mainly upon the alleged impact of the pumping on surface water. The citizens' group also argued that groundwater fell under the public trust doctrine.

The trial court dismissed the public trust claim but held that whenever the pumping of groundwater interfered with rights to surface water, the owners of the groundwater right must yield. Given the inevitable connection between groundwater and surface water in almost all cases, this ruling could have negatively impacted almost all groundwater rights.



The Court of Appeals rejected this ruling and found that where surface water and groundwater uses conflict, a reasonable use balancing test should be applied. Applying this test to the case at hand, the court found that if Nestlé pumped at its maximum rate of 400 gallons per minute, the affected surface water would lose 24% of its base flow. The court determined that this reduction was unreasonable. The case was remanded to the trial court to determine what pumping rate would allow both groundwater and surface water users a reasonable use of the waters.

McNamara v. City of Rittman

The second case arose in the Ohio Supreme Court. In *McNamara v. City of Rittman*, 107 Ohio St. 243, 838 N.E.2d 640 (2005), decided on December 21, 2005, Ohio's highest court considered a question from the United States Court of Appeals for the Sixth Circuit: "Does an Ohio homeowner have a property interest in so much of the groundwater located beneath the land owner's property as is necessary to the use and enjoyment of the owner's home?"

Inside this issue:

WSC Member News	2
Around the States	6
Washington Update	7

Significant Court Cases Decided on Groundwater Issues

Continued from page 1

The case had been filed and litigated in the United States District Court for the Southern District of Ohio. That court granted judgment to the city over a landowner who alleged that the city's pumping of groundwater interfered with the landowner's use of water beneath the landowner's property.

Because the case depended upon state law, the federal appellate court certified the afore-mentioned question to the Ohio Supreme Court, which answered in the affirmative, holding that "Ohio landowners have a property interest in the groundwater lying beneath their land and that governmental interference with that right can constitute a taking." Note that whether a "property interest" exists or not is a technical, legal question. The right must be a "property interest" to receive constitutional protection.

Brady v. Abbott Laboratories

The third case, *Brady v. Abbott Laboratories*, No. 04-15257, 2005 U.S. App. LEXIS 28889 (9th Cir. Dec. 29, 2005), comes from Arizona. Abbott Laboratories pumped 122 acre-feet of water, dropping the water table beneath Brady's land by 16 feet. As a result, Brady, a pecan farmer, lost his pecan trees. The trial court granted Brady an award of \$1.2 million, ruling that Abbott's use of the groundwater was unreasonable. The United States Court of Appeals for the 9th Circuit overruled, finding that since the water was put to beneficial use on the land from which it was extracted, the use was "reasonable."

All of the decisions, particularly the McNamara ruling, are favorable to the water well industry. Unlike the other two cases, McNamara may not be appealed, and is now the law of Ohio.

Water Systems Council will continue to follow these and other cases and provide updates when appropriate.

WSC MEMBER NEWS.....

WSC Fall 2005 Members Meeting Report

The WSC Fall 2005 Members Meeting in Sanibel Island, Florida brought the largest meeting presence in the organization's history, with 78 members and guests in attendance, including Pete Peterson from the Georgia Drillers Association and Henry Boyd of Empire State Water Well Drillers' Association.

Guest Speakers included J.I. (Jimmy) Palmer, Jr., Regional Administrator, United States Environmental Protection Agency (U.S. EPA), Region IV, Atlanta, Georgia; Susan Seacrest, President, The Groundwater Foundation; Randy Hartman, Georgia Department of Community Affairs; Courtney Power, Integrated Science & Engineering; and Ann Marie Gebhart, General Manager, Water Programs, Underwriters Laboratories. Rita Wayco, also of the U.S. EPA Region IV, attended as well.

Members convened to hear about ongoing and future WSC projects, including the Screven County Project and the WSC's partnership with Underwriters Laboratories to provide basic water well test kits to victims of Hurricanes Katrina and Rita.



**J.I. (Jimmy) Palmer, U.S. EPA
Region IV Administrator, addresses
the WSC Fall Members Meeting.**

WSC 2006 Leadership

2006 OFFICERS

WSC members elected the following 2006 OFFICERS at the Fall 2005 Members Meeting:

PRESIDENT	Dennis Coggins , Goulds Pumps/ITT Industries
1ST VICE PRESIDENT	Kathy Berrill , A.O. Smith Corporation
2ND VICE PRESIDENT	Dennis Wierzbicki , Grundfos Pumps
SECRETARY/TREASURER	Gerry Duggan , Flexcon Industries
PAST PRESIDENT (2005)	Jim Dunbar , Franklin Electric/Franklin Pump Systems
DISTRIBUTOR BOARD MEMBER	Tom Sterzing , Austin Pump & Supply Co.
EXECUTIVE DIRECTOR (ex-Officio)	Kathleen Stanley

2006 BOARD OF DIRECTORS

WSC members also elected the 2006 BOARD OF DIRECTORS. Members of the Board of Directors not listed above are:

Stephen Anderson Merrill Manufacturing Storm Lake, IA	Emery Davis Campbell Manufacturing Bechtelsville, PA	Joe Lane Amtrol, Inc. West Warwick, RI
Bo Andersson Danfoss Flomatic Industries Glens Falls, NY	Kevin Hancock Pentair Water Group Delavan, WI	John Surinak Maass Midwest Manufacturing Huntley, IL

Well-Deserved Recognition for Don Hobbs



At the Fall Members Meeting, WSC member Don Hobbs was recognized for his many years of support to Water Systems Council. Hobbs served on WSC's Board of Directors and is a Past President. He is retiring from Franklin Electric on April 1, 2006. WSC wishes Don a very happy retirement.

Welcome New 2005 WSC Members:

Individual Members:

Christian Kellner
Kellner Well Service
Olean, New York

Paul LaFramboise
LaFramboise Well Drilling
Thompson, Connecticut

Charles Nielson
Nielson Water Systems
New Paltz, New York

Thomas L. Bates
Lee Bates & Sons
Rome, New York

Allied Interest Members:

Associations:

Georgia Drillers Association
Pete Peterson, President
Duluth, Georgia

Texas Ground Water Association
Leroy Goodson
Austin, Texas

Manufacturer Representatives:

GroupOne Northeast, Inc.
Bernie Kistner
Poughkeepsie, New York

Schnase Sales, LLC
Rick Schnase
Hastings, Nebraska



Attention WSC Members...

2006 Membership Renewal Packages were mailed to members on January 1. For more information on membership, contact Kathryn Auth at 202-625-4387 or kathie.auth@watersystemscouncil.org.

WSC Invites the U.S. EPA to a Well Drilling Demonstration



On November 22, Doug Middleton, Tom Collier and Bill Howe from Queenstown Well Drilling along with Eric Dougherty of the Maryland Department of the Environment performed a well drilling demonstration for Steve Heare, Director of the U.S. EPA Drinking Water Division, and Charlene Shaw, U.S. EPA Outreach Team Leader. The demonstration, which began at 8 a.m., involved drilling a 350-foot well on a private residence in Queen Anne's County. WSC invited the EPA personnel to the demonstration to help familiarize them with the work involved in drilling a well.



According to Dawn Greene, WSC Hotline Coordinator, the demonstration was well received. Despite rain and cold temperatures, all attendees stayed until the end.

WSC MEMBER NEWS.....

MD/DE Children's Water Festival Gears Up To Host Some 1,600 Students in March

The final stages of planning are underway for the March 23, 2006 Maryland/Delaware Children's Water Festival at Chesapeake College in Wye Mills, MD. A total of 1,648 fourth and fifth grade students have registered for the festival. Students will be attending from Caroline, Cecil, Dorchester, Kent, Queen Anne's, St. Mary's, Talbot, Wicomico, and Worcester counties in Maryland, as well as from several private schools in Delaware.

For details on the Maryland/Delaware festival, contact Dawn Greene at 202-625-4387 or dawn.greene@watersystem-scouncil.org.

Planning continues for a children's festival at Catawba College in Salisbury, North Carolina. The festival is scheduled for late October of this year, and will target approximately 1,500 fifth graders from the Rowan-Salisbury School District.



wellcare® Hotline... Still Hot!

The wellcare® Hotline wrapped up another successful year, logging a total of 3,302 calls for 2005. While this number is slightly lower than last year's total of 3,583 calls, the hotline's e-mail inquiries more than doubled in 2005 with 272 inquiries, up from 130 in 2004.

Call topics also shifted last year, with the hotline receiving more mechanical pump questions and fewer contaminant questions than in the prior year. Most contaminant questions were related to radon and lead.

The hotline continues to receive hurricane-related calls. Most concern testing, treating for bacteria and mechanical questions such as those about pump failure after a power outage.

wellcare® Hotline Frequently Asked Questions

Q. What is the standard or MCL (Maximum Contaminant Level) for radon in water?

A. Currently, there is no EPA standard for radon in water. WSC recommends that you check with your state radon office for a state radon standard. If you do not have a state radon office, WSC recommends treatment for radon if your level is 2,000 pCi/L or more. For further information on radon, view the wellcare® information sheet on "Radon" at <http://www.watersystemscouncil.org/wellcare/infosheets.cfm>.

Q. My test results indicate bacteria is present. How do I chlorinate my well to remove the bacteria?

A. Details on chlorinating a well can be found in the wellcare® information sheet, "Chlorinating Your Well," which can be found at <http://www.watersystemscouncil.org/wellcare/infosheets.cfm>. Well owners should retest their water for bacteria 1-2 weeks after the chlorination process is complete.

Q. How do I get my water tested?

A. Visit the Underwriters Laboratories Inc.® Drinkwell™ website at www.uldrinkwell.com for a test kit. Hotline staff can assist well owners in selecting the best test kit for their specific situation. If a well owner would prefer to go through a local laboratory, hotline staff can provide the number to the state health department to obtain a list of certified laboratories.



wellcare® Hotline
888-395-1033 or
click here

West Virginia: WSC Supports Monongalia County Health Department On-site Water Well Work

WSC is helping to provide training and support to the Monongalia County Health Department to educate sanitarians and others in West Virginia on water well care. In October, WSC distributed wellcare® packets and information on the wellcare® hotline to over 120 West Virginia University physicians who attended a lecture on the Monongalia County Water Well Revolving Loan Fund (WWRLF) and wellcare® awareness. The WWRLF may soon expand to other counties in West Virginia.

The West Virginia Well Drillers Work Group has completed its final draft of Water Well Regulations for the state. The regulations are awaiting approval by the Bureau for Public Health and the West Virginia Department of Environmental Protection.

Nebraska Board Issues Order Barring New Irrigation Wells

The Board of Directors for Nebraska's Central Platte Natural Resources District (CPNRD) voted December 6, 2005 to prevent the drilling of new irrigated wells throughout the district. The Central Platte district includes 2.1 million acres, of which over 925,000 acres already have access to irrigation sources. The board will honor existing well permits, but will deny requests for permits submitted on or after December 6, 2005. According to the NRD proposal, the closure will not impact "replacement wells, wells that pump less than 50 gallons per minute, dewatering wells pumping less than 90 days, and test hole wells."

Nebraska: WSC Collaborates with The Groundwater Foundation on Well Census Demonstration Project

WSC is collaborating with The Groundwater Foundation (TGF) and the Nebraska Department of Natural Resources (NDNR) to assist in the NDNR's development of a water well database, as part of the Well Census Demonstration Project. Nebraska-based TGF is taking the lead on working with the NDNR to initiate a dialogue with well owners in the state.

Texas Board Examines Stricter Aquifer Rules

The board of Texas' Edwards Aquifer Authority plans to develop stricter rules in order to protect water quality, as part of its strategic plan for 2006. The rules will address hazardous materials and impervious cover – that is, any material that prevents water from reaching the aquifer, including roofs, sidewalks, driveways and streets.

Some Texas legislators are opposed to the impervious cover rules, claiming that they might hinder development in the area.

North Carolina Wells Test Positive for Arsenic

According to North Carolina toxicologist Ken Rudo, many North Carolina wells are contaminated with arsenic, although many well owners may be unaware of the problem. Rudo says that more than 2,800 wells in 79 North Carolina counties have tested positive for arsenic over the past five years. He believes thousands more wells may also be affected, but says resources do not allow for widespread testing of wells for arsenic.

Though it can be naturally-occurring in groundwater, arsenic is a toxic substance that can increase an individual's risk of getting cancer and can affect the circulatory system. For more information on arsenic, view the wellcare® information sheet on the topic at <http://www.watersystemscouncil.org/wellcare/infosheets.cfm>.

CDC to Study Well Water Treatment in Six States

The Centers for Disease Control and Prevention (CDC) plans to conduct a study of wells in Colorado, Maine, Missouri, Nebraska, New Jersey and Wisconsin. The study will focus on water treatment. WSC will provide more information in a future issue of *Well Connected*.



WASHINGTON UPDATE

EPA Report Predicts Public Water Needs Totaling \$276.8 Billion Over the Next 20 Years

In its Third Report to Congress, the EPA predicts the U.S. will need to invest \$276.8 billion in the nation's water systems. The assessment is based on the results of the EPA's 2003 Drinking Water Infrastructure Survey. Projects assessed in the report include those intended to maintain public health and guarantee continued compliance with the Safe Drinking Water Act, among other needs. The investments would primarily come from water rates paid by water system users, and may also be supplemented by federal, state and local governments.



WSC NATIONAL PROGRAMS OFFICE
1101 30th Street, N.W.
Suite 500
Washington, DC 20007

Join Us in the Nation's Capital!

WSC SPRING 2006 MEMBERS MEETING

February 28 - March 3

St. Regis Hotel ♦ Washington, DC

FEBRUARY 28/MARCH 1 – Congressional Meetings (optional)

MARCH 1 – President's Welcome Reception and
Congressional wellcare® Awards

MARCH 2 – Committee Discussions & Reports,
Executive Director's Report, Business Meeting,
Invited Speakers and Evening Dinner Event

MARCH 3 – Board of Directors Breakfast Meeting

Registration Information must be in no later than February 1. For more information, contact Kathryn Auth, WSC Director of Member Services, at 202-625-4387 or kathie.auth@watersystemscouncil.org.